

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE ANNUITY, PENSION, WELFARE and APPRENTICESHIP
SKILL IMPROVEMENT AND SAFETY FUNDS of the
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 137, 137A, 137B, 137C, 137R, AFL-CIO by its
Trustees EDWARD KELLY, JEFFREY LOUGHLIN, PETER
PATERNO, ROSS PEPE, NICHOLAS SIGNORELLI
and NICHOLAS SIGNORELLI, JR., and JOHN and JANE DOE,
as Beneficiaries of the ANNUITY, PENSION, WELFARE and
APPRENTICESHIP SKILL IMPROVEMENT AND SAFETY
FUNDS of the INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 137, 137A, 137B, 137C, 137R, AFL-CIO,

**STIPULATION OF
SETTLEMENT &
ORDER OF
DISCONTINUANCE**

08-CIV-4737 (SCR)

Plaintiffs,

-against-

NELSTADT READY MIX CONCRETE CORP.,

Defendant.
-----X

This Stipulation of Settlement is made by and between the parties hereto, to wit,
Plaintiffs, THE ANNUITY, PENSION, WELFARE and APPRENTICESHIP SKILL
IMPROVEMENT AND SAFETY FUNDS OF THE INTERNATIONAL UNION OF
OPERATING ENGINEERS (the "LOCAL 137 TRUST FUNDS") (hereinafter collectively
referred to as the "Plaintiffs"), and Defendant NELSTADT READY MIX CONCRETE CORP.
("NELSTADT").

WHEREAS, Defendant NELSTADT is indebted to the various fringe benefit funds
established for the benefit of the members of LOCAL 137 and known as the LOCAL 137
TRUST FUNDS, for unpaid contributions totaling \$64,788.07 for the period of September 1,
2007 through May 31, 2008; and

WHEREAS, the parties are desirous of resolving in this Stipulation of Settlement and

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Order of Discontinuance all disputes between them.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto mutually agree as follows:

1. Defendant NELSTADT acknowledges that the sum of \$64,788.07 along with interest thereon totaling \$2,711.93 calculated at 10% per annum for the five (5) month period of the payment plan detailed hereafter is justly due and owing to the Plaintiff LOCAL 137 TRUST FUNDS.

2. Defendant NELSTADT agrees to pay the total sum of \$67,500.00 as follows:

- a. \$13,500.00 on or before the 15th day of July, 2008
- b. \$13,500.00 on or before the 15th day of August, 2008;
- c. \$13,500.00 on or before the 15th day of September, 2008;
- d. \$13,500.00 on or before the 15th day of October, 2008; and
- e. \$13,500.00 on or before the 15th day of November, 2008.

3. Each payment shall be made in the form of a bank check made payable to the "LOCAL 137 JOINT FUNDS" and forwarded to Plaintiffs' counsel, James M. Steinberg, Esq., at Brady McGuire & Steinberg, P.C., 603 Warburton Avenue, Hastings-on-Hudson, New York 10706.

4. Defendant NELSTADT, hereafter, agrees to remain current in the payment of all fringe benefit contributions owed on behalf of the LOCAL 137 members in its employ commencing with those contributions due and owing for the month of June 2008. The Defendant agrees that such payments will not include post-dated checks.

5. In the event of any default by the Defendant in the payment due under the provisions of this Stipulation, and provided that said default continues for a period of five (5) days after notice to cure is sent to the Defendant *via* certified mail at 40 Huntington Place, New Rochelle, New York 10801, the Clerk of the United States District Court for the Southern

District of New York is hereby authorized to enter judgment on the application of the Plaintiffs against the Defendant – with notice to the Defendant – in the sum of \$67,500.00 and any accrued interest, less payments received plus liquidated damages calculated on the deficiency amount of \$64,788.07 at the rate of twenty percent (20%) as prescribed by ERISA, along with attorneys' fees in the amount of \$1,750.00, together with the costs and disbursements of this action.

6. In exchange for the prompt and full payments of the amounts identified herein, the Plaintiffs waive any claims for liquidated damages and additional attorneys' fees and disbursements of this action otherwise available under the Employee Retirement Income Security Act of 1974 unless the conditions articulated in paragraph 5 must be invoked.

7. This action is hereby settled as to the Defendant herein.

IT IS HEREBY FURTHER STIPULATED AND AGREED, by and between the undersigned, including the attorneys of record for the Plaintiffs and the Defendant that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of this action, the above-captioned action shall be discontinued, without costs to either party as against the other, subject to reopening in the event of default or failure of any payment, term or condition agreed to, required or contained in this Stipulation of Settlement and Order of Discontinuance.

IT IS HEREBY IN ADDITION STIPULATED AND AGREED, by and between the undersigned, including the attorneys of record for the Plaintiffs and the Defendant, that this Stipulation may be executed in any number of counterparts and by different parties

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SEIFF KRETZ

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hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same Stipulation.

Dated: Hastings-on-Hudson, New York
June 30, 2008

BRADY McGUIRE & STEINBERG, P.C.

By: James M. Steinberg (JS-3515)
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SEIFF KRETZ & ABERCROMBIE

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INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 137, 137A, 137B, 137C
& 137R, ANNUITY, PENSION, WELFARE,
and APPRENTICESHIP SKILL
IMPROVEMENT & SAFETY FUNDS

NELSTADT READY MIX CONCRETE
CORP.

By: John Caposella
Title: President
EIN No. 13- 3662069

By: Nicholas Signorelli, Trustee

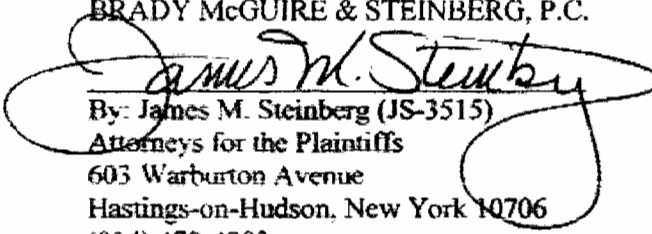
SO ORDERED:

The Honorable Stephen C. Robinson

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Dated: Hastings-on-Hudson, New York
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ENGINEERS, LOCAL 137, 137A, 137B, 137C
& 137R, ANNUITY, PENSION, WELFARE,
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IMPROVEMENT & SAFETY FUNDS


By: Nicholas Signorelli, Trustee

NELSTADT READY MIX CONCRETE
CORP.

By: John Caposella
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EIN No. _____

SO ORDERED:


The Honorable Stephen C. Robinson

DATED 7/22/08